ORIGINAL

O/A 11-2-99

FILED
DEBBIE CAUSSEAUX
SEP 02 1999
CLERK, SUPREME COURT
By _____

In The Supreme Court of Florida

95,411

FOLIAGE FOREST, INC.,

Appellant,

v.

E.I. DuPONT DE NEMOURS AND COMPANY and CRAWFORD & COMPANY,

Appellees.

CASTLETON GARDENS, INC.,

Appellant,

v.

E.I. DuPONT DE NEMOURS AND COMPANY and CRAWFORD & COMPANY,

Appellees.

COUNTRY JOE'S NURSERY, INC.,

Appellant,

v.

E.I. DuPONT DE NEMOURS AND COMPANY and CRAWFORD & COMPANY,

Appellees.

PALM BEACH GREENERY, INC.,

Appellant,

v.

E.I. DuPONT DE NEMOURS AND COMPANY and CRAWFORD & COMPANY,

Appellees.

MORNINGSTAR NURSERY, INC.,

Appellant,

v.

E.I. DuPONT DE NEMOURS AND COMPANY and CRAWFORD & COMPANY,

Appellees.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

REPLY BRIEF OF APPELLANTS

FERRARO & ASSOCIATES, P.A.
200 South Biscayne Boulevard
Miami, Florida 33131
-and-
RUSSO APPELLATE FIRM, P.A.
Appellate Law Center
6101 Southwest 76th Street
Miami, Florida 33143
Telephone (305) 666-4660

Attorneys for Appellants

CERTIFICATE OF TYPE SIZE AND STYLE

Appellants are utilizing a twelve (12) point Courier font in this brief.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

REPLY ARGUMENT

Certified Question 1

DOES A CHOICE-OF-LAW PROVISION IN A SETTLEMENT AGREEMENT CONTROL THE DISPOSITION OF A CLAIM THAT THE AGREEMENT WAS FRAUDULENTLY PROCURED, EVEN IF THERE IS NO ALLEGATION THAT THE CHOICE-OF-LAW PROVISION ITSELF WAS FRAUDULENTLY PROCURED?

The first certified question should be answered in the negative. DuPont[1] has failed to demonstrate *true* conflict between the laws of Delaware and Florida such that resort to the choice of law provision contained in the releases[2] is necessary. Absent a showing that the law sought to be applied is different than Florida law, it will be *presumed* to be the same as the law of Florida.

At best, DuPont has shown that it *expected* the law of Delaware was such that actions against it for fraudulent inducement would be barred by execution of its near standard release. However, it has not *shown* Delaware law to be different than Florida law, thus requiring disregard of the choice of law provision contained in the subject releases.

Moreover, the choice of law provision contained in the releases DuPont obtained from Appellants should not be enforced because such provisions are part of the overall fraudulent course of conduct for which Appellants have sued DuPont. Florida courts will not enforce a choice of law provision where to do so would bring harm to a Florida citizen or would frustrate established

---

[1]The underlying lawsuit included as defendant Crawford & Co., an insurance adjusting firm. In this brief, the use of the name DuPont is intended to include Crawford & Co., which served at all material times as an agent of DuPont involved in procuring the releases.

[2]Only those releases executed by Foliage Forest and Castleton Gardens contain the Delaware choice of law provision.

public policy of Florida. For these reasons, the choice of law provision in this case should not be enforced and the first certified question should be answered in the negative.

A. Florida law applies where party seeking to rely on foreign law fails to demonstrate foreign law different from law in Florida

DuPont argued in the federal district and circuit courts that Appellants' suits against it must be dismissed based upon Delaware law which DuPont maintains prohibits actions for fraudulent inducement following the execution of a settlement agreement or release. However, DuPont has repeatedly failed to cite to any Delaware authority which supports its position. Instead, DuPont has relied throughout on federal precedent, which was reversed based on an inaccurate prediction of the effect of Delaware's law.

"[T]he choice of law doctrine presumes that, 'where a party seeking to rely upon foreign law fails to demonstrate that the foreign law is different from the law of Florida, the law is the same as Florida.'" *Aetna Casualty & Surety Co. v. Ciarrochi*, 573 So. 2d 990 (Fla. 3d DCA 1991). *See also Gustafson v. Jensen*, 515 So. 2d 1298, 1300 (Fla. 3d DCA 1987). DuPont's failure to demonstrate the law of Delaware is different than the law of Florida results in application of Florida's law to the dispute.[3]

DuPont relied significantly upon *Matsuura v. E.I. DuPont de*

---

[3]DuPont asserts that it cited authority to show the difference between Florida and Delaware law. In February of 1997 — prior to the district court decision in *Matsuura* — DuPont conceded the laws of Florida and Delaware were in substantial accord on the issue of construing the subject releases. (Foliage Forest: R1-9, 6 n.3). By June 20, 1997, when it submitted its reply, DuPont was touting *Matsuura* as dispositive of the issue. (Foliage Forest: R1-26). Now, with the Ninth Circuit's reversal in *Matsuura*, DuPont no longer appears to believe *Matsuura* represents Delaware law.

Nemours & Co., Case No. CV-96-01180 (D. Hawaii 1997), wherein the court predicted that, under the law of Delaware, actions against DuPont would be barred following execution of releases of the type involved in the instant litigation. The Ninth Circuit recently issued its opinion in *Matsuura v. Alston & Bird*, 166 F.3d 1006 (9th Cir. 1999), concluding that the district court had erroneously predicted the effect of Delaware's law. The panel explained:

> Under Delaware law, parties who have been fraudulently induced to enter into a contract have a choice of remedies: they may rescind the contract or they may affirm the contract and sue for fraud.

166 F.3d at 1008.

Since issuing *Matsuura*, the Ninth Circuit has had at least one opportunity to reconsider the issue. In *Fuku-Bonsai, Inc. v. E.I. DuPont de Nemours and Co.*, 1999 WL 599218 (9th Cir. Aug. 11, 1999), the court explained that "the Delaware courts are in accord with the *basic contract principle* that a party defrauded on a contract may elect either to rescind the contract or to affirm it and sue for damages." *Id.* at *2 (emphasis added). In its brief discussion regarding the application of state law, the panel in *Fuku-Bonsai* noted that the parties before it had agreed that Delaware law applied, *id.* at *3 n.3, thus removing from consideration the issue of choice of law.[4]

---

[4]The Ninth Circuit noted in *Fuku-Bonsai* that Hawaii follows the Restatement (Second) of Conflict of Laws, under which the panel felt "the law selected by the parties in a choice of law provision governs a claim of fraudulent inducement to contract." 1999 WL 599218 at *3 n.3. Appellants take exception with the conclusion, because fraudulent inducement is a *tort* arising from the conduct leading up to a contract as opposed to an action on the contract. For the reasons discussed herein, Appellants contend that the choice of law provision should not be enforced.

The decisions in *Matsuura* and *Fuku-Bonsai* are premised in part upon *DiSabatino v. United States Fidelity & Guaranty Co.*, 635 F. Supp. 350 (D.Del. 1986), where the panel undertook a detailed examination of the law of Delaware as it relates to actions for fraudulent inducement. According to the panel in *DiSabatino*, the law of Delaware would likely permit a defrauded claimant to either seek rescission of the contract/release or stand on the release and sue for damages. *Id.* at 352. As the district court noted in the instant case, Florida law provides similar remedies to individuals defrauded into settling tort claims. *See, e.g., HTP, Ltd. v. Lineas Aereas Costarricenses*, 685 So. 2d 1238 (Fla. 1996)(acknowledging alternative for defrauded party to sue for damages); *Defigueiredo v. Publix Supermarkets, Inc.*, 648 So. 2d 1256 (Fla. 4th DCA 1995) (release resulting from fraud can be set aside); *Henson v. James M. Barker Co., Inc.*, 555 So. 2d 901 (Fla. 1st DCA 1990) (same).

Thus, the clear *indicia* from federal precedent is that Delaware law and Florida law are in harmony on the subject of the options available to those defrauded into settling a tort claim. The defrauded claimant must elect between an equitable remedy (rescission) and a legal remedy (suit for damages). DuPont has yet to present any court with a contrary decision from a Delaware state court. This Court according need not resolve any choice of law issue since no conflict has been shown to exist — or appears to exist — between the subject jurisdictions.

Because DuPont has failed to demonstrate conflict as to remedies available under the laws of Delaware and Florida, it makes little sense to expend judicial energy on the issue. Furthermore,

under the law of *either* jurisdiction, the release in question cannot be read to bar the claim for fraudulent inducement because the release, and the course of conduct undertaken to obtain it, gives rise to the cause of action for fraud in the inducement.

B. The choice of law provision must be rejected because its enforcement will assist in the fraud alleged as the basis for Appellants' fraudulent inducement claims

Even if Delaware law applies, the choice of law provisions contained in the subject releases are unenforceable because they violate Florida public policy. In general, Florida will refuse to enforce a choice of law clause "where to do so would bring harm to a Florida citizen or would frustrate an established public policy of this state." *Gustafson*, 515 So. 2d at 1300. Florida maintains an ever-vigilant policy against frauds committed within the state. *See HTP, Ltd.*, 685 So. 2d at 1240 (policies against fraud protect society's strong need for truthful dealings in personal and commercial relationships). *Compare Continental Mortgage, Inc. v. Sailboat Key, Inc.*, 395 So. 2d 507 (Fla. 1981) (usury laws not so distinctive a part of state's public policy that a court will not look to another jurisdiction's law assuming it is sufficiently connected with contract containing choice of law provision). Florida courts refuse to enforce contractual provisions pursuant to which a party seeks to avoid liability its own fraud. *Mankap Enterp., Inc. v. Wells Fargo Alarm Srvcs.*, 427 So. 2d 332 (Fla. 3d DCA 1983).

There can be little doubt in this case that, prior to the Ninth Circuit's decision in *Matsuura*, DuPont believed that its contractual invocation of Delaware law would bar these fraud claims

under the *Matsuura* district court decision. If so, then DuPont's deliberate selection of Delaware law was for the purpose of avoiding liability for its own fraud. The Plaintiffs' allegations show that DuPont already knew of damning test results and had decided to exclude them from the consideration of the parties with whom settlement was being negotiated.

If the contract or release containing the choice of law provision is set aside — as it can be if obtained through fraud — then the provision must fall *with* the contract.[5] Florida law disallows the enforcement of such a provision because enforcing the choice of law provision would, in essence, further the underlying fraud. *See, e.g., HTP, Ltd. v. Lineas Aereas Costarricenses.* Thus, in the event the Court finds it necessary to answer the first certified question, it must be answered in the negative.

DuPont has failed to provide any authority to support the proposition that Delaware and Florida laws differ on the relevant subject. Thus, Florida law applies to the underlying dispute. Indeed, even if the choice of law provision is deemed to apply, the provision cannot be applied in this case because it was procured as part of DuPont's overall fraudulent course of conduct.

Certified Question 2

IF FLORIDA LAW APPLIES, DOES THE RELEASE IN THESE SETTLEMENT AGREEMENTS BAR PLAINTIFFS' FRAUDULENT INDUCEMENT CLAIMS?

In Florida, "a release may be set aside by [a] court where the

---

[5]*But see Fuku-Bonsai* (court accepted concept that Delaware law applied to determination of whether fraud claim could be brought despite release because release contained choice of law provision). Appellants maintain that the release itself was procured through fraud and that the choice of law provision favored by DuPont was a most desirable feature for DuPont.

evidence is sufficient to establish it has been obtained by fraud." *Henson,* 555 So. 2d at 908. The district court in this case acknowledged that the claimant may either seek rescission or seek damages. DuPont continues to urge, however, that the releases restrict Appellants to rescission as an exclusive remedy. The law in Florida[6] does not so provide. Thus, the second question should also be answered in the negative.

A. Language used in the releases restricts their effect to actions arising directly from the use of DuPont's contaminated product

DuPont alleges that the releases it obtained from Appellants contain general language releasing the company from liability in any way arising from the use of its defective product. Florida *ordinarily* recognizes a general release as embracing all claims *which have matured at the time of its execution. Sottile v. Gaines Construction Co.*, 281 So. 2d 558 (Fla. 3d DCA 1973). However, the primary function of the court construing a release agreement is to serve the intent of the parties to the agreement. In *Cerniglia v. Cerniglia,* 679 So. 2d 1160 (Fla. 1996), the court considered whether a marital settlement agreement constituted a release from liability for actions amounting to a fraud on the court. The court concluded that the husband's net worth was a matter before the court which could have been addressed as part of the proceedings[7]

---

[6]Indeed, the law in Delaware provides defrauded individuals with the same remedial options. *DiSabatino.*

[7]The *Cerniglia* decision also notes that the wife accepted the settlement agreement in open court against the advice of counsel. In the instant case, it has been made clear throughout the proceedings that Appellants were not represented by counsel, despite an indication to the contrary in the releases. Indeed, Crawford & Co. discouraged Appellants from such action by threatening not to pay if the growers obtained counsel.

and intent to effectuate a sweeping general release was plain.

Inasmuch as there was no litigation pending between the parties in this case, there can be no claim Appellants could have addressed the issue before the court. There can be no claim that Appellants manifested an intent to release DuPont for *any* wrong it might commit, especially because Appellants were unaware at the time the releases were executed that a fraud claim was available.

In *Fuku-Bonsai*, the panel concluded Delaware principles of contract construction instruct that specific recitals in a release, when followed by general language, restrict the scope. In the instant case, there is clear intent to limit the releases to actions arising from the use of DuPont's defective product:

> WHEREAS, Grower has asserted a claim against DuPont in connection with various claims related to Grower's purchase and/or use of Benlate fungicide[;]
>
> WHEREAS, Du Pont has denied the aforementioned claims;
>
> WHEREAS, Grower desires to release and dispose of all claims against Du Pont...and all claims incident thereto against Du Pont...thereby finally disposing of same, and to give assurance that Grower will not hereafter prosecute such claims or cause them to be prosecuted.

(Foliage Forest: R1-1-18). Plainly, the scope of the release given to DuPont contemplated *only* claims arising from the purchase and/or use of Benlate. DuPont's assertions that the releases apply to *any* claim Appellants might have against it is without support. Rather, Florida permits release of claims based upon *future* misconduct *only* where the release is *specific*. *Witt v. Dolphin Research Ctr., Inc.*, 582 So. 2d 27 (Fla. 3d DCA 1991) (release not effective to preclude action based on subsequent negligence unless instrument *clearly and specifically* provides for limitation or elimination of liability

for such acts).

In the instant case, the relevant releases plainly do not release DuPont from liability for conduct occurring after or contemporaneous with settlement. Indeed, given that a claim for fraudulent inducement does not mature until one is *induced*,[8] there can be no genuine belief on DuPont's part that releases obtained from Appellants were unlimited in scope, time or quality of conduct released.[9] *See Kenet v. Bailey*, 679 So. 2d 348 (Fla. 3d DCA 1996) (release executed after attorney's improper disbursement of funds from trust account deemed ineffective to bar conversion claim since client was unaware of distribution at time he signed release).

> A contract procured through fraud is ***never*** binding upon an innocent party thereto. As to him, such contract is

---

[8]A fraudulent inducement claim requires plaintiff to show that defendant made a false representation of fact, which defendant knew to be false, which was made for the purpose of inducing plaintiff to act in reliance on it and (d) plaintiff had a right to rely. *Pettinelli v. Danzig*, 722 F.2d 706 (11th Cir. 1984). *See also Finn v. Prudential-Bache Securities, Inc.*, 821 F.2d 581 (11th Cir. 1987) (representation by counsel barred claim for justifiable reliance on representations by hostile opposing party); *Ungerleider v. Gordon*, 936 F. Supp. 915 (M.D. Fla. 1996)(parties executing release represented by counsel in palpably adversarial relationship, plaintiff barred from claiming fraud in inducement for defendant's refusal to disclose information); *Hall v. Burger King Corp.*, 912 F. Supp. 1509 (S.D. Fla. 1995). The focal point of these applications has been the relationship between the parties to the release. *But see Chase v. Dow Chemical Co.*, 875 F.2d 278 (10th Cir. 1989)(rejecting reasoning one is never justified in believing anything represented by adversary to dispute, even if underlying dispute involves claim of fraud).

> [E]very dispute is adversarial, but parties must have some assurance of legal recourse if they are induced to settle the dispute on the basis of false representations of material facts.

Id. at 283.

[9]It should also be noted that some of the releases specifically recite that they apply to damages arising from any fact or matter existing or occurring at any time *up to and including* the date release is signed. (Foliage Forest: R1-1-19).

> voidable; as to the wrongdoer, it is void. If a party to a written release of liability for personal injuries was induced to sign it by false and fraudulent representations, either as to the nature or extent of his injuries or as to the contents, import or legal effect of the release, and he himself innocently and justifiably relied upon such representations to his detriment and was guilty of no negligence in failing to ascertain the true facts, he is *not* bound by such release.

Florida East Coast Railway Co. v. Thompson, 111 So. 525 (Fla. 1927). *See also Columbus Hotel Corp. v. Hotel Management Co.*, 156 So. 893 (Fla. 1934). Florida has exhibited a longstanding policy to prevent fraud in inducement of agreements and releases.

In *Jankovich v. Bowen*, 844 F. Supp. 743 (S.D. Fla. 1994), on motion to dismiss claims for causes of action such as fraudulent inducement and securities fraud, the court centered on whether the claimant showed material misrepresentation had been made and whether claimant was justified in relying on representations. Essentially, the *Jankovich* opinion declared and considered a distinction between counts involving acts occurring prior to the agreement and counts based on events occurring simultaneously with the execution of the agreement. The former, the court opined, were likely covered by a merger clause contained in the agreement.

Jankovich involved a settlement agreement entered into in order to resolve a dispute over wrongful transfer of certain stock. A paragraph in the settlement agreement specifically recited the parties' acknowledgment regarding the registration rights of certain stock to be transferred under the agreement's terms. *Id.* at 746. Essentially, *Jankovich* holds that because the issue of stock registration was within the scope of the agreement, it was subject to the agreement's merger clause. The releases in question do not

contain traditional merger language; rather, the only appearance of similar language provides:

> 13. This document embodies the entire terms and conditions of the Release described herein.

(Foliage Forest: R1-1-22). Thus, there is no provision in the release regarding representations made outside the release. Given the apparent lack of consideration paid to such extra-contractual matters, DuPont cannot claim the release included fraudulent inducement claims.

The "restrictive" recitals — or 'whereas' clauses — contained in the subject releases cannot be ignored, as DuPont suggests they must. Rather, they must be given full effect to limit the scope of the release Appellants granted to DuPont. *See, e.g., Johnson v. Johnson*, 725 So. 2d 1209, 1212-13 (Fla. 3d DCA 1999)(prefatory recitations not binding but can be read in conjunction with operative parts of contract to ascertain intention of parties) (*citing KMS Fusion, Inc. v. United States*, 36 Fed. Cl. 68 (1996), *aff'd*, 108 F.3d 1393 (Fed. Cir. 1997)). The release in question reflects the importance assigned by the parties to the recitals:

> 13. ...All words, phrases, sentences, and paragraphs, *including the recitals* hereto, are material to the execution hereof.

(Foliage Forest: R1-1-22). It is thus clear that Appellants *intended* to release DuPont *only* for claims arising from or related to the purchase and/or use of the defective fungicide. The claim for fraudulent inducement cannot be deemed to merge into the agreement because there is no representation pertaining to the

danger of Benlate[10] and no indication other than DuPont's general denial of liability that the parties ever considered the scope of Benlate's dangerous propensities.[11]

DuPont argues that it obtained from Appellants a valid release from liability for past conduct - marketing a defective product. It alleges that the release does not amount to an exculpatory clause, which it concedes is disfavored under Florida law, despite its evident attempt to have the courts treat the release as wholly exculpating DuPont from liability for its conduct and the conduct of its agents in procuring the releases. However, the conduct DuPont argues is within the scope of the release consists of fraudulent concealment of information which caused Appellants to accept less in settlement than their claims were worth. Florida law will not permit an exculpatory clause which excuses one from liability for one's own fraud or intentional tort. *Mankap*

B. Appellants cannot be limited to rescission as the exclusive remedy for their fraudulent inducement claims

DuPont asserts that Appellants were required to rescind the

---

[10]Additionally, some courts have pointed out that a party cannot claim fraudulent inducement when there has been an underlying claim for fraud or dishonesty. In those instances, the courts have reasoned that if someone has defrauded you, you should be placed on notice of their proclivity to do so and you should not rely on their representations. In the instant case, the underlying claims arose from distribution of a defective product and there is no specific representation in the releases as to DuPont's evaluation or testing of the fungicide.

[11]*See also Matsuura*, 166 F.3d at 1010 (recital at beginning of release to effect plaintiffs intended to terminate litigation of claims related to purchase and/or use of fungicide restricted broad language used subsequently in release. The specific recital limiting the intended release suggested claims for personal injury or property damage caused by the product. In common understanding, the release as limited by the specific recitals *would not encompass claims for fraud*.

releases prior to seeking damages for fraudulent inducement. Florida law does not restrict plaintiffs in fraudulent inducement claims to such action. *HTP, Ltd.; Defigueiredo. DiSabatino* is also instructive on this point. In *DiSabatino*, the panel explained that "rescission is often an inadequate remedy for tort plaintiffs, because they may be prejudiced by delay in pursuing their claims." 635 F. Supp. at 353-54. As noted above, Florida permits the defrauded plaintiff to elect either an equitable or legal remedy for fraudulent inducement. It would be *inadequate*, indeed, to limit Appellants to rescission of the release and to require them to return the settlement proceeds to DuPont. Appellants would suffer from having to return the monies, while DuPont would seemingly benefit from the potential inability of some growers to return the funds. As the panel noted in *DiSabatino*, "[d]uress, coercion, and immediate need for liquid assets are ever present for the unfortunate tort claimant." *Id.* at 355-56.

In *Kobatake v. E.I. DuPont de Nemours & Co.*, 162 F.3d 619, 623 (11th Cir. 1998), the panel concluded that a similar release obtained by DuPont barred a later action by a Benlate victim for fraudulent inducement because the plaintiff elected to sue for damages. The court explained that Georgia law permits a plaintiff to elect between the equitable remedy of rescission and the legal remedy of standing on the agreement and suing for damages. *Id.* at 625. However, the *Kobatake* panel explained, because the plaintiff did *not* seek rescission, it was bound by the terms of the agreement. This conclusion overlooks the argument that one should not be held to a release which has been procured through fraud.

The *Kobatake* decision is plainly distinguishable from the circumstances presently before this Court. Kobatake's settlement with DuPont was the product of the parties' attorneys' negotiations which took place near the end of extremely contentious litigation. Thus, the circumstances of *Kobatake* might support a claim that the plaintiff should be compelled to rescind the agreement it reached on the advice of counsel and in the course of a lawsuit. Appellants here did not seek the advice of counsel - because DuPont's agent, in the course of a fraudulent pattern - forbade them from hiring attorneys. (Foliage Forest: R1-1-15-16). Moreover, the releases were signed outside the litigation setting. Appellants were, in every respect, defrauded into settling their claims based upon DuPont's misrepresentations as to the dangers caused by Benlate. Thus, they cannot be limited to rescission.

CONCLUSION

The first question should be answered in the negative because DuPont has failed to demonstrate Delaware law conflicts with Florida law on the subject of remedies available to an one fraudulently induced to settle a tort claim. The choice of law provision in question was procured as part of the fraud upon which Appellants base their claims against DuPont. Therefore, the provision should not be given effect.

The second question, which assumes application of Florida law, should also be answered in the negative. Florida law permits a defrauded party to elect rescission or a suit for damages. Appellants did not even know of the existence of such a claim until they discovered DuPont's deceitful practice of failing to disclose

the true dangers of its product. Thus, Appellants cannot be said to have released DuPont from liability for an unknown cause of action.

Respectfully submitted,

FERRARO & ASSOCIATES, P.A.
Suite 3800
200 South Biscayne Boulevard
Miami, Florida 33131
-and-
RUSSO APPELLATE FIRM, P.A.
Appellate Law Center
6101 Southwest 76th Street
Miami, Florida 33143
Telephone (305) 666-4660

Attorneys for Appellants

By: _____
Stuart B. Yanofsky
Florida Bar No. 841358

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the Reply Brief of Appellants was mailed this 30th day of August, 1999 to: James F. Bogan, III, Esquire, A. Stephens Clay, Esquire, and William Boice, Esquire, Counsel for Appellees, Kilpatrick Stockton LLP, 1100 Peachtree Street, Suite 2800, Atlanta, Georgia, 30309; and Paul L. Nettleton, Esquire, Co-Counsel for Appellees, Carlton, Fields, et. al, 4000 NationsBank Tower, 100 Southeast Second Street, Miami, Florida 33131.

_____